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Held at Headquarters, New York, on Tuesday, 24 March 2015, at 10 a.m.

Chair: Mr. Ružička ..... (Slovakia)
Chair of the Advisory Committee on Administrative and Budgetary Questions: Mr. Ruiz Massieu

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The meeting was called to order at 10.05 a.m.

Agenda item 132: Programme budget for the biennium 2014-2015 (*continued*)

Programme budget implications of draft resolution A/69/L.55: Statute of the United Nations Nelson Rolihlahla Mandela Prize (A/69/826; A/C.5/69/19)

1. **Mr. Huisman** (Director, Programme Planning and Budget Division), introducing the statement submitted by the Secretary-General in accordance with rule 153 of the rules of procedure of the General Assembly on the programme budget implications of draft resolution A/69/L.55 on the statute of the United Nations Nelson Rolihlahla Mandela Prize (A/C.5/69/19), said that, should the General Assembly adopt the draft resolution, additional resource requirements in the amount of $97,600 would arise for 2015 under the programme budget for the biennium 2014-2015, under section 28, Public information. That amount would represent a charge against the contingency fund for the biennium 2014-2015.

2. **Mr. Ruiz Massieu** (Chair of the Advisory Committee on Administrative and Budgetary Questions), introducing the related report of the Advisory Committee (A/69/826), said that the Advisory Committee had no objection to the proposed resource requirements of $97,600. However, taking into account the pattern of expenditures under section 28 of the programme budget for 2014-2015, it recommended that the General Assembly should request the Secretary-General to make every effort to absorb those requirements under the section, failing which the additional expenditures related to the activities arising from the draft resolution should be reflected in the second performance report for the biennium.

3 The Advisory Committee noted that the award ceremony was scheduled to be held in September 2015 rather than on Nelson Mandela International Day, 18 July. While adequate preparation for the award of the first Prize was needed, the current scheduling appeared to be inconsistent with the proposed statute of the Prize and would have the financial implications explained in paragraph 6 of the report of the Advisory Committee.

4. **Mr. Mamabolo** (South Africa), speaking on behalf of the Group of 77 and China, said that the establishment of the United Nations Nelson Rolihlahla Mandela Prize was a symbol of the international community's recognition of the extraordinary life and legacy of Mr. Mandela and his contribution to the purposes of the Organization. The award of the Prize every five years provided an opportunity to pay tribute to those committed to the service of the people, human values and democracy.

5. While adequate preparation for the first award of the Prize was needed, the Group concurred with the Advisory Committee that the scheduling of the award ceremony in September 2015 rather than on Nelson Mandela International Day was inconsistent with the proposed statute of the Prize and would have additional financial implications.

6. The Group noted the total requirements for 2015 of $101,600, of which $4,000 had been identified for absorption within the approved appropriation for section 28, Public information, of the programme budget for the biennium 2014-2015. Adequate resources under the regular budget should be provided for the implementation of all mandates approved by United Nations intergovernmental bodies.

7. **Mr. Mihoubi** (Algeria), speaking on behalf of the Group of African States, said that consideration of the statute of the United Nations Nelson Rolihlahla Mandela Prize was essential to satisfy African expectations that Mr. Mandela, who had dedicated his life to furthering the objectives of the United Nations, should be honoured.

8. The Group took note of the estimated resources of $101,600 required for the activities related to the implementation of the draft resolution, of which $4,000 was expected to be absorbed. Awarding the Prize on Nelson Mandela International Day in 2015 would be feasible and consistent with the proposed statute, and would reduce the financial implications.

9. The Group looked forward to detailed examination of the resources required with the aim of ensuring that the planned activities were fully funded and implemented.

10. **Mr. Mminele** (South Africa) said that Nelson Rolihlahla Mandela's call for the international community to heal wounds, bridge differences and build a new world remained relevant to a global society which was as divided and in need of hope as it had been when the United Nations was founded. He reiterated the appreciation of South Africa for the solidarity shown by

Member States in honouring Mr. Mandela's life and memory. The establishment of the United Nations Nelson Rolihlahla Mandela Prize was an acknowledgement of Mr. Mandela's extraordinary contribution to furthering the Organization's purposes and values.

11. No one was born hating others because of the colour of their skin, their background or their religion. People learned to hate and could, therefore, also learn to love, because love came more naturally than hate. Leaders were not only born to the role but also made by their own actions. Humanity should empower potential leaders to address the challenges facing the international community. The Prize was a tribute to and public recognition of the humble contributions of individuals to the purposes and principles of the United Nations.

12. He was concerned about the delay in preparations for the first award ceremony, which should be scheduled for Nelson Mandela International Day in 2015. Although the deadline was tight, it would be met if sufficient effort was made.

Agenda item 137: Human resources management (*continued*) (A/C.5/69/L.9)

Draft decision A/C.5/69/L.9: Human resources management

13. **The Chair** invited the Committee to resume its consideration of draft decision A/C.5/69/L.9, introduced at its 26th meeting.

14. **Mr. Takasu** (Under-Secretary-General for Management), making a statement in accordance with rule 112 of the rules of procedure prior to action on the draft decision, said that the Secretary-General had been acting within his authority in issuing the revised bulletin on personal status for purposes of United Nations entitlements (ST/SGB/2004/13/Rev.1). Embracing diversity and the principle of non-discrimination were values at the core of the United Nations. As chief administrative officer of the Organization, the Secretary-General had the privilege and duty of ensuring that those values were upheld and championed at the United Nations at all times.

15. The United Nations operated globally with a highly diverse workforce. Staff members, representing almost two hundred different nationalities, worked together to deliver the Organization's mandates. Tens of thousands of men and women with different backgrounds, ethnic origins, sexual orientations, religions and beliefs, some young, some older, and of different races and cultures, complemented each other's strengths and talents.

16. Many staff members, however, did not work in their home countries. They served and lived abroad for extended periods of time, if not for their entire career. They often married at the duty station where they lived; in many cases their spouses were of a different nationality. Their children were born where they lived and served, and some of them adopted children from outside their home countries.

17. The previous approach of determining personal status for purposes of United Nations entitlements exclusively on the basis of nationality had led to discriminatory treatment of staff from different countries. Member States had been requested by the United Nations to take a position on each other's legally established personal status determination. Staff members had successfully sued the Organization, creating legal and financial liabilities for it.

18. Under the revised Secretary-General's bulletin, the law of a staff member's country of nationality applied if a staff member married, divorced or adopted a child in his or her country of nationality. Moreover, the United Nations determination of a staff member's personal status would have no bearing on how the country of that individual's nationality would determine his or her status.

19. The Charter of the United Nations designated the Secretary-General as chief administrative officer of the Organization. Article 101, paragraph 1, also provided that staff members were appointed by the Secretary-General under regulations established by the General Assembly. The Assembly had promulgated Staff Regulations which further authorized the Secretary-General to provide and enforce such staff rules consistent with the Staff Regulations as he considered necessary.

20. The General Assembly had confirmed the Secretary-General's wide discretionary authority in that function time and time again. It had been on that authority that he had decided to align the administrative approach of the United Nations, described in his bulletin, with the Organization's operational needs, legal obligations and core values. His decision had been based on full and careful

consideration of the Member States' diverse views on the matter and had fully complied with prior General Assembly resolutions.

21. The content and issuance of the revised bulletin were the prerogative of the Secretary-General, as routinely reaffirmed by the General Assembly.

22. The Assembly recognized the value of diversity, represented through the people who served the United Nations. As the Secretary-General and the staff championed the United Nations core values and the principle of non-discrimination, the General Assembly should recognize his authority as chief administrative officer to take decisions in administrative matters to comply with the Organization's values and legal obligations. The Secretary-General trusted that the Member States agreed that no one should suffer from discrimination in the workplace and that the United Nations should lead by example.

23. **Ms. Power** (United States of America) requested a recorded vote on the draft decision.

24. **The Chair** said that a recorded vote had been requested.

Statements made in explanation of vote before the voting

25. **Mr. Mažeiks** (Latvia), speaking on behalf of the European Union and its member States; the candidate countries Albania, Iceland, Montenegro, Serbia and the former Yugoslav Republic of Macedonia; the stabilization and association process country Bosnia and Herzegovina; and, in addition, Liechtenstein and Ukraine, said that if the draft decision was adopted the General Assembly would request the Secretary-General to withdraw his revised bulletin on personal status for purposes of United Nations entitlements (ST/SGB/2004/13/Rev.1), reissue his original bulletin (ST/SGB/2004/13), and submit a report on the implementation of Assembly resolution 58/285.

26. The revised bulletin, however, in no way contravened resolution 58/285. The legal advice on the matter presented to the Secretary-General and shared with the Committee had been clear: the revised bulletin did not amend the Staff Regulations and Rules or define or redefine any terms therein, and the Secretary-General had been acting within his purview in issuing it.

27. Resolution 58/285 had been the product of careful and sometimes divisive negotiations 10 years previously. The language used had been approved by all Member States, and the General Assembly had noted the practice in the Organization at that time regarding the determination of personal status. Just as the Secretary-General had been acting within his purview in issuing the original bulletin in 2004, an act affirmed by the Committee, he had been acting well within his authority as chief administrative officer of the Organization in issuing the revised bulletin. The States members of the European Union would vote against the draft decision and encouraged other delegations to do likewise.

28. **Ms. Power** (United States of America) said that her delegation would vote against the draft decision and urged others to do the same. The draft decision was designed to undermine the authority of the Secretary-General as chief administrative officer, a role entrusted to him by the Charter. At issue was a Secretary-General's bulletin which contained a straightforward change in the implementation of the Staff Regulations and Rules. It was an administrative decision made by and for the United Nations, and would not affect the domestic legislation of Member States.

29. In issuing the revised bulletin, the Secretary-General had been acting within his authority and on the advice of the Office of Legal Affairs, shared with the Committee on several occasions. Although that advice was clear, persuasive and based on precedent, the Russian Federation had requested the Secretary-General to withdraw the revised bulletin, giving a misleading impression of its effect. The Russian claim that the revised bulletin would impose a new standard on Member States was false: the revised bulletin would change United Nations practice but not Member States' domestic legislation. The Russian Federation claimed that the revised bulletin would significantly increase costs, but the Office of Human Resources Management had informed the Committee that the bulletin had had no financial implications so far and that future costs would be insignificant.

30. It was, rather, the draft decision which would have a profound impact, since it was designed to alter the division of labour between the Secretary-General and the General Assembly. Although the Assembly, and the Committee in particular, played an essential role in guiding the Organization's operations, the draft decision would result in their micromanaging a decision which

was within the Secretary-General's purview. It would set a dangerous precedent by diminishing the role of the Secretary-General and involving the Assembly in a degree of granularity which could adversely affect the delivery of mandates and create legal uncertainty regarding the extent of the Secretary-General's administrative authority and the durability of his decisions. The revised bulletin should not be exploited for political ends and the Committee should not be divided by a vote wanted by very few delegations. The United States would vote against the draft decision and urged other delegations to do likewise.

31. **Ms. Wilson** (Australia), speaking also on behalf of Canada and New Zealand, said that the delegations were disappointed by the draft decision, which sought to undermine the Secretary-General's authority as chief administrative officer. In issuing the revised bulletin, the Secretary-General had been acting within his legitimate authority and on the advice of the Office of Legal Affairs.

32. The Committee had an important role in United Nations human resources management, but the proponents of the draft decision were seeking to oversee the Secretariat in a completely impractical manner and had broken with the Committee's established practice. The precedent risked overwhelming the General Assembly with human resources matters that were within the Secretary-General's purview.

33. The draft decision also related to the broader issue of discrimination, which the three delegations condemned in all its forms and manifestations. It was deeply disturbing that the United Nations, responsible for ensuring implementation of the Universal Declaration of Human Rights, was being asked to adopt a draft decision with discrimination at its heart. She urged Member States to oppose the unprecedented draft decision.

34. **Mr. Sauer** (Finland), speaking also on behalf of Denmark, Iceland, Norway and Sweden, said that the Secretary-General's role as chief administrative officer, enshrined in the Charter, gave him the authority to issue administrative instructions regarding the implementation of the Staff Regulations and Rules. The draft decision contained no justification for the withdrawal of the revised Secretary-General's bulletin, which did not run counter to the Staff Regulations and Rules or to General Assembly resolutions on human resources management. Such bulletins were instruments for the internal administration of the United Nations and had no effect on the domestic legislation or national policies of Member States. He saw no reasonable arguments in support of the draft decision. The revised bulletin was essential to allow the Secretary-General to perform his duty of ensuring equal treatment of all staff members.

35. Since the Committee's work was based on consensual decision-making, the Nordic countries regretted the submission of the draft decision while negotiations on other aspects of the agenda item were ongoing. They would vote against the draft decision and encouraged other delegations to do likewise.

36. **Ms. Bodenmann** (Switzerland), speaking also on behalf of Liechtenstein, said that the two delegations would vote against the draft decision, which encroached on the Secretary-General's competences and authority, enshrined in the Charter. Administrative decisions concerning the implementation of the Staff Regulations and Rules were the prerogative of the Secretary-General. The role of the General Assembly did not extend to internal administrative questions. That division of responsibilities was particularly relevant in that the revised bulletin would not affect Member States' domestic legislation or policies. Rather, it was designed to ensure the just and equitable treatment of staff members on the basis of the principle of non-discrimination.

37. The two delegations were concerned about the need for a vote, since the Committee's decisions were almost always taken by consensus. They encouraged other delegations to vote against the draft decision.

38. **Ms. Gharbi** (France) said that it was regrettable that the Committee had been unable to reach a consensus on the draft decision and that a vote had been requested. It was the Secretary-General's prerogative as chief administrative officer to take decisions regarding the personal status of staff members. Calling that prerogative into question ran counter to Article 100 of the Charter; the Secretary-General had been completely within his rights in issuing his revised bulletin.

39. The Legal Counsel had made it clear in the previous day's informal consultations that the revised bulletin did not affect Member States' domestic legislation and applied only to United Nations staff, whose personal status was now determined on the basis of their duties rather than their nationality. Her

delegation would vote against the draft decision and called on other delegations to do likewise.

40. **Mr. Kadurugamuwa** (Sri Lanka) said that his delegation would vote against the draft decision, which attempted to limit the authority conferred on the Secretary-General as chief administrative officer by the Charter. That position, however, was without prejudice to any substantive elements related to the draft decision.

41. **Mr. Iliichev** (Russian Federation) said that notwithstanding his delegation's endeavours to explain its arguments, some delegations took a different view. His delegation did not question the authority of the Secretary-General, as chief administrative officer, to issue administrative bulletins under Article 97 of the Charter. That authority, however, extended only to the interpretation of the Charter and Staff Regulations and Rules, not to their amendment without consultation of the Member States. It was precisely because far-reaching changes had been made to important provisions and rules for which the General Assembly was responsible that the Russian Federation had requested the withdrawal of the revised bulletin.

42. As delegations prepared to vote on the matter, his delegation had a duty to alert them to the fact that the changes made by the Secretary-General not only had financial implications which had not been considered by the Committee, but also set the stage for clashes with national legislation, to the detriment of the previous delicate compromise.

43. The principle whereby the domestic legislation of staff members' countries of nationality was taken into account in determining their personal status for the payment of dependency allowances had been applied since the establishment of the United Nations, 70 years earlier. His delegation saw no significant reason to change the status quo, which demonstrated the Organization's respect for cultural differences and the sovereign right of States to establish legislative norms. The United Nations Administrative Tribunal had ruled in a 2008 judgement that the previous arrangement did not result in any discrimination affecting human rights. However, the newly promulgated practice discriminated against many Member States, at a time when discussion of the situation in the General Assembly had been effectively disallowed. He trusted that delegations would take a balanced approach when voting on the draft decision.

44. **Mr. Wilson** (Saudi Arabia) said that his delegation respected the prerogatives of the Secretary-General but did not support the extension of entitlements to same-sex couples as it considered such relationships to be morally unacceptable.

45. **Mr. Shpakovsky** (Belarus) said that the revised bulletin breached General Assembly resolution 58/285, pursuant to which national legislation played a preponderant role in the determination of staff members' personal status and judgements on the part of the Secretariat were precluded. The Secretariat was taking unilateral decisions that undermined the very basis of social relations and the sovereignty, legislation, traditions and religious foundations of Member States, in flagrant violation of Article 2, paragraph 7, of the Charter.

46. The Secretary-General had exceeded his prerogative in issuing the revised bulletin, which ran counter to various General Assembly resolutions. Its credibility and the prospects for its acceptance by Member States were therefore in doubt. The Committee now had the opportunity to react on behalf of the General Assembly to the Secretariat's unilateral and non-transparent advancement of a dangerous and contradictory policy. The legitimacy and effectiveness of any United Nations document depended on an open, clear and democratic adoption procedure. The lack of intergovernmental political consensus on the matter had not been taken into account in the revised bulletin, and the objectivity and neutrality of the Secretary-General and other United Nations officials involved in the bulletin's preparation were in doubt. Implementation of the revised bulletin could have financial implications in terms of the United Nations budget and staff costs, and had not been duly approved by Member States. His delegation would vote in favour of the draft decision and called on others to do likewise.

47. **Sir** Mark **Lyall Grant** (United Kingdom) said that the Secretary-General had not exceeded his authority in issuing the revised bulletin. The unambiguous legal advice shared with the Committee had made it clear that the revised bulletin did not amend the Staff Regulations and Rules, redefine any terms contained therein, or contravene any United Nations resolutions. It did not affect Member States' domestic legislation and its issuance had been within the Secretary-General's purview.

48. At a time when the United Nations was implementing essential management reforms which would increase its capacity to address the challenges of the future, the draft decision was designed directly to undermine the Secretary-General's authority. Its adoption would be a retrograde step for the Organization. It was an unnecessary distraction. His delegation would vote against the draft decision and encouraged others to do likewise.

49. **Mr. Nell** (Germany) said that the Secretary-General had acted within his purview in issuing the revised bulletin. It was important for the functioning of the United Nations that the Committee should support him as chief administrative officer. The draft decision ran counter to the principle of equal treatment of United Nations staff. His delegation would vote against it and encouraged Member States to do likewise.

50. **Ms. Wu** (China) said that her delegation agreed with the position of the Russian Federation on the draft decision.

51. *At the request of the representative of the United States of America, a recorded vote was taken on the draft decision.*

In favour:

Algeria, Bahrain, Bangladesh, Belarus, Benin, Botswana, Brunei Darussalam, Burundi, Cambodia, Chad, China, Comoros, Democratic People's Republic of Korea, Djibouti, Egypt, Eritrea, Gambia, India, Iran (Islamic Republic of), Iraq, Jordan, Kuwait, Kyrgyzstan, Lebanon, Libya, Malaysia, Mauritania, Nicaragua, Nigeria, Oman, Pakistan, Qatar, Russian Federation, Saudi Arabia, Solomon Islands, Somalia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates, United Republic of Tanzania, Uzbekistan, Zimbabwe.

Against:

Albania, Andorra, Argentina, Australia, Austria, Bahamas, Belgium, Belize, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, El Salvador, Estonia, Fiji, Finland, France, Georgia, Germany, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liberia, Liechtenstein, Lithuania, Luxembourg, Malawi, Malta, Marshall Islands, Mexico, Montenegro, Netherlands, New Zealand, Norway, Palau, Panama, Papua New Guinea, Paraguay, Peru, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Rwanda, Saint Kitts and Nevis, Sao Tome and Principe, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Timor-Leste, Tuvalu, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela (Bolivarian Republic of).

Abstaining:

Antigua and Barbuda, Barbados, Bhutan, Burkina Faso, Cabo Verde, Congo, Côte d'Ivoire, Dominican Republic, Ecuador, Ethiopia, Ghana, Guinea, Guyana, Indonesia, Jamaica, Kazakhstan, Kenya, Lao People's Democratic Republic, Maldives, Mauritius, Monaco, Mongolia, Mozambique, Myanmar, Namibia, Nepal, Philippines, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Senegal, Singapore, Suriname, Thailand, Togo, Trinidad and Tobago, Viet Nam.

52. *The draft decision was rejected by 80 votes to 43, with 37 abstentions.*

53. **Mr. García Landa** (Mexico) said that his delegation had voted against the draft decision, fully convinced that the Secretary-General had acted within his purview in issuing the revised bulletin. During the discussion before the vote, it had become clear that the revised bulletin did not establish an international standard for marriages, domestic partnerships and similar unions, or for other freely undertaken legal arrangements. Neither did it encroach on national legislation regulating such acts.

54. His delegation supported the Secretary-General's decision to grant entitlements to United Nations employees by reference to the law of the competent authority under which the personal status had been established rather than to the employee's nationality. The revised bulletin gave United Nations staff and their families more certainty, to the benefit of the Organization.

55. The revised bulletin also promoted the elimination of discrimination. In Mexico, the Act on the prevention and elimination of discrimination and the national programme for equality and non-discrimination ensured that the rights of all were upheld.

56. **Mr. Iliichev** (Russian Federation) reiterated that the revised bulletin ran counter to the Charter of the United Nations and the Staff Regulations and Rules, and, therefore, was invalid.

57. **Mr. Shpakovsky** (Belarus) said that his delegation objected to the Committee's decision, confirmed its stated position, and reserved the right to raise the matter further at a later date.

58. **Mr. Siah** (Singapore) said that, although the Secretary-General had authority in administrative matters as chief administrative officer, General Assembly resolution 58/285 reaffirmed that all provisional rules and amendments to the Staff Rules should be consistent with the intent and purposes of the Staff Regulations and should be reported to the General Assembly in accordance with staff regulation 12.3, which provided for consultation between the Secretary-General and the Assembly. Given the sensitive nature of the matter at hand, the Secretary-General should have consulted Member States before issuing the revised bulletin.

59. **Mr.** Guilherme **de Aguiar Patriota** (Brazil) said that his delegation had voted against the draft decision because the changes introduced in the revised bulletin were a step in the right direction. The new criteria were more equitable and accommodated a broader range of situations than the previous arrangement. His Government supported the equal treatment of men and women without distinction as to gender, race, religion or sexual orientation. United Nations staff members were international officials accountable only to the Organization and should be entitled to equality of treatment. Changes in staff-related criteria should, nevertheless, be subject to discussion and decision by the Member States.

60. **Mr. Anshor** (Indonesia) said that although the Secretary-General as chief administrative officer had authority in matters related to the Staff Regulations and Rules, bulletins and administrative instructions, intergovernmental supervision was needed to ensure the integrity of that authority in accordance with the Charter. While the Secretary-General had acted within his authority in issuing the revised bulletin, it had implications in matters being debated in the Main Committees of the General Assembly. His delegation had strong reservations regarding the implementation of the revised bulletin, which could undermine Member States' national laws.

61. **Mr. Raja Zaib Shah** (Malaysia) said that his delegation had voted in favour of the draft decision but reaffirmed the Secretary-General's prerogative to issue bulletins under Articles 97 and 101 of the Charter. It regretted that the Committee had not been able to reach a consensual agreement to resolve the matter amicably in the time available and had been forced to resort to a vote. The matter was delicate and of importance to many Member States; the Committee should not neglect its possible legal impact.

The meeting rose at 11.10 a.m.